



Rule(s) Review Checklist Addendum
(This form must be filled out electronically.)

This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.

All responses should be in **bold** format.

Document(s) Reviewed (include title): **WAC 458-61-025 (Taxability of the transfer or acquisition of the controlling interest of an entity with an interest in real property located in this state)**

Date last reviewed: **September 1999**

Reviewer: **Ed Ratcliffe**

Date current review completed: **July 22, 2002**

Briefly explain the subject matter of the document(s):

This rules explains the application of the real estate excise tax (REET) to property owned by an entity whose controlling interest is transferred. The rule provides pertinent definitions and explains when the tax is due, the measure of the tax, and the requirement to file a return.

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Public requests for review:

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

2. Related statutes, interpretive and/or policy statements, court decisions, BTA decisions, and WTDs: (Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.)

YES	NO	
	X	Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
	X	Are there any interpretive or policy statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)



	X	Are there any interpretive or policy statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
X		Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
	X	Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive or policy statement.)

If the answer is "yes" to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

Det. No. 00-083, 19 WTD 1037 (2000), explains that the full fair market value of the real property is the basis for the "selling price" when a controlling interest in a partnership is transferred. The value cannot be apportioned because some ownership interests can claim the transfer of their partnership interests were exempt because no capital gain recognized. This ruling should be incorporated into the rule to clarify the determination of the "selling price" for controlling interest sales.

Det. No. 98-083, 17 WTD 271 (1998), explains that the full fair market value of the real property is the basis for the "selling price" when a fifty percent interest in an LLC is transferred. There is no apportionment for value based upon the ownership interest transferred. This ruling should be incorporated into the rule to clarify the determination of the "selling price" for controlling interest sales.

McFreeze Corp. v. Dept. of Revenue, 102 Wn. App. 196, 6 P.3d 1187 (2000), explains that in the sale of an entity, the value taxed is not the consideration paid, but the value of the property owned by the entity. This information should be incorporated into the rule.

3. Additional information: Identify any additional issues (other than those noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

When revising these rules, the drafter should consider revising the rules to provide the information in a way more consistent with rules currently being adopted by the Department.

Clarify date of sale discussion to include treatment for delayed transfers of a partial interest when the seller has a firm purchasing commitment for the controlling interest in an entity from the purchaser.



As provided in the previous review:

- Add an example to clarify that taxable value of the transfer is the total value of the property.
- Add the term "limited liability company" to the list of entity types for which a transfer of a controlling interest results in REET liability (subsection (2)(b)(ii)); and
- Eliminate the current text of subsection 9 (due dates, interest and penalties) in favor of a cross-reference to WAC 458-20-090.

4. Listing of documents reviewed: The reviewer need identify only those documents that were not listed in the previous review of the rule(s). Use "bullets" with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

- **Chapter 82.45 (Excise tax on real estate sales)**
- **Chapter 82.46 (Counties and cities—Excise tax on real estate sales)**

Interpretive and/or policy statements (e.g., ETAs, PTAs, and IAGs):

Court Decisions:

McFreeze Corp. v. Dept. of Revenue, 102 Wn. App. 196, 6 P.3d 1187 (2000), explains that in the sale of an entity, the value taxed is not the consideration paid, but the value of the property owned by the entity.

Board of Tax Appeals Decisions (BTAs):

Appeals Division Decisions (WTDs):

Det. No. 00-083, 19 WTD 1037 (2000), explains that the full fair market value of the real property is the basis for the "selling price" when a controlling interest in a partnership is transferred. The value cannot be apportioned because some ownership interests can claim the transfer of their partnership interests were exempt because no capital gain recognized.

Det. No. 98-083, 17 WTD 271 (1998) explains that the full fair market value of the real property is the basis for the "selling price" when a fifty percent interest in an LLC is transferred. There is no apportionment for value based upon the ownership interest transferred. This ruling should be incorporated into the rule.

Det. No. 96-006, 16 WTD 61 (1996) Determination explained that the transfer of controlling interest of stock in corporation with real property in Washington triggered real estate excise tax. The transfer was not exempt from tax because of ERISA preemption.

Attorney General Opinions (AGOs):



Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

5. Review Recommendation:

- ☒ **Amend**
- ☐ **Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- ☐ **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- ☐ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

Explanation of recommendation: Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Incorporate legislation as noted in prior review (chapter 207, Laws of 1999);
- Clarify the taxable value for the transfer of a controlling interest
- Clarify the date of sale when purchase delays partial transfer of the controlling interest, but the seller has a firm commitment for the purchase of the controlling interest.

This review only covers the period from the previous rule review period to date and includes all recommendations made in the prior rule review.

This rule should be revised to incorporate information from the determinations and court decision noted in section 2 and the recommendations provided in the previous review as noted in section 3.

6. Manager action: Date: _____

_____ Reviewed and accepted recommendation

Amendment priority:

- _____ 1
_____ 2
_____ 3
_____ 4